

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STROHL SYSTEMS GROUP, INC., and	:	CIVIL ACTION
MYLES L. STROHL	:	
	:	
v.	:	
	:	
WILLIAM FALLON	:	No. 05-CV-0822

MEMORANDUM AND ORDER

This is a diversity suit by Strohl Systems Group, Inc. and its majority shareholder, Myles Strohl (the “Company”) against a former employee and minority shareholder, William Fallon, charging that Fallon breached a confidentiality agreement with the Company and must therefore return his stock for one-half its current value. I previously granted summary judgment in favor of the plaintiffs and referred this matter to Magistrate Judge David R. Strawbridge for the determination of damages and other relief and for the conduct of settlement negotiations.

On January 11, 2007, Judge Strawbridge filed a Report and Recommendation on the limited issue of determining the appropriate date for the appraisal of Fallon’s shares. Judge Strawbridge concluded that February 22, 2005, was the date to be used in valuing Fallon’s shares and also set forth the procedure for accomplishing the appraisal process. Fallon does not contest the appropriateness of the February 22, 2005, appraisal date or the process. Instead, he argues for the first time that the Investment Agreement does not state that he is required to offer his stock back to plaintiffs at fifty per cent of its appraised value, rather “the Investment Agreement unequivocally provides that Fallon is required to offer his stock back to the plaintiffs at 50 % of ‘Appraised Value,’” and that “Appraised Value” is defined in the agreement as the “value of

shares of the Corporation' rather than the value of only Fallon's shares." *Def. Obj.* at ¶ 3.

This objection must fail for two reasons. First, this issue was decided when I granted summary judgment in favor of the plaintiffs on September 29, 2006. Having determined that Fallon had committed a breach of the confidentiality provisions of the subscription agreement and the investment agreement, I found that he was required to sell **his shares of Company stock back to the Company for fifty percent of their appraised value**. I granted summary judgment because I concluded that the contractual language of the agreements was unambiguous and subject to only one reasonable interpretation. *See Sanford Inv. Co. v. Carrier Express, Inc.*, 198 F.3d 415, 420-21 (3d Cir. 1999). To the extent this is another attempt to ask me to reconsider my prior order, it is refused.

Second, Fallon's argument is inconsistent with his prior arguments at best and disingenuous at worst. Consistent with his prior reading of the damages provision of the Investment Agreement, Fallon's argument to date has been that the requirement that he sell his shares back to the Company at 50 % of the value of those shares unfairly **penalizes** him. Fallon now argues that the Investment Agreement definition of appraised value as "the value of shares of the corporation, as of the applicable date," *see Defs.' Ex. B, Investment Agreement*, ¶ 7, requires the Company to buy back Fallon's shares (6 %) for an amount to be determined by a calculation of half the value of all shares of the Company (94 %) - in other words - to reward him for his breach of the confidentiality agreement.

When ¶ 7 of the Investment Agreement is read alone, this argument may not seem as obviously specious as when the Investment Agreement is read as a whole. However, when read in context, the term appraised value is not ambiguous and cannot reasonably be construed as

Fallon suggests. To do so would negate the Company's clear intent to fashion an appropriate way to assess damages for the harm a violating investor caused the Company and in its place, reward the offending investor with a windfall - half the value of the corporation - regardless of the harm he had caused, regardless of his intention to harm the company, and regardless of the value of his equity interest.

An appropriate order follows.

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AND NOW, this 13th day of February, 2007, upon consideration of the defendant's objections to the Magistrate Judge David R. Strawbridge's Report and Recommendation (Dkt. # 89), and the plaintiffs' response thereto (Dkt. # 90), IT IS HEREBY ORDERED that:

1. Defendant's objections are OVERRULED.
2. The Report and Recommendation is approved and adopted.
3. This matter is referred back to Judge Strawbridge for the further consideration of damages and for further settlement negotiations if warranted.

BY THE COURT:

/s/ J. William Ditter, Jr.
J. WILLIAM DITTER, JR., S.J.